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SEP 04 2009

OFFICE OF PETITIONS

In re Application of :
Maschinsky : DECISION ON APPLICATION
Application No. 10/098,689 : FOR
Filed: March 15, 2002 : PATENT TERM ADJUSTMENT
Atty Docket No. 4330-4003US1

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705," filed July 11, 2008. This paper was recently forwarded to the undersigned for consideration. Applicant requests that the initial determination of patent term adjustment be corrected from one hundred eighty (180) days to four hundred sixty six (466) days.

The request for correction of the initial determination of patent term adjustment (PTA) is GRANTED-IN-PART. The amount of PTA at the time of the mailing of the notice of allowance is Three Hundred and forty-eight (348) days.

The Office has updated the PALM screen to reflect that the Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is 348. A copy of the updated PALM screen, showing the determination, is enclosed.

On April 17, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 180 days. On July 11, 2008, applicants timely¹ submitted an application for patent term adjustment (with required fee).

Applicants dispute the reduction of 286 days associated with a response filed on February 15, 2006. Applicants contend that the

¹ The Issue Fee payment was also received on August 15, 2008.

examiner contend that they did not file a supplemental response on March 25, 2006. Accordingly, applicants assert that the reduction of 286 days is in error. Accordingly, applicants maintain that the reduction pursuant to 37 CFR 1.704(c) (8) is not warranted. Applicants did not contest the 757 days awarded under 37 CFR 1.702(a) (1) or the 129 days reduced for the reduction under 37 CFR 1.704(b) as it relates to the response to the notice to file missing parts.

Applicants state that the above-indicated application is not subject to a terminal disclaimer.

Upon review, the Office agrees that the 286 day reduction is errant. The file history reflects that the applicants did not submit an amendment in March 2006. Rather the only amendment submitted was the amendment filed on February 17, 2006. Accordingly, the notice of non-compliant amendment was errant. As no supplemental response was filed on March 29, 2006, the period of reduction of 286 days is being removed.

However, the Office failed to reduce for the period of abandonment of the application. Specifically, the Office mailed an Office action on June 10, 2005 and set a shortened statutory period of three months to reply. Since applicant did not respond to the office action the application became abandoned on September 11, 2005. Applicant filed a petition to revive the application on February 17, 2006 that the Office granted on September 01, 2006. Accordingly, the applicant should have received a reduction for the period beginning on September 11, 2005 and ending on June 17, 2006, four months after the grantable petition has been filed. See 37 CFR 1.704(c) (3). The reduction amounts to a period of 280 days. However, since the period of reduction for the abandonment overlaps with the 160 day reduction under 37 CFR 1.704(b), applicant is assessed a reduction of one period of 280 days and not 160 + 280 days.

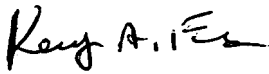
Accordingly, the amount of PTA at the time of the mailing of the notice of allowance is the following: (757 (Office delay) - (280 + 2 + 129) (applicant delay) = 348 days.

The Office notes that the determination does not include any additional time pursuant to 37 CFR 1.702(a) (4) or 1.702(b) nor any reductions pursuant to 37 CFR 1.704(c) (10). The Office will determine the PTA as it relates to such provisions at the time of the issuance of the patent and applicants will be provided

notice in the Issue Notification Letter that is mailed to applicants approximately three weeks prior to the issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration

Enclosure: Copy of adjusted PALM calculation.

Day : Friday
Date: 9/4/2009
Time: 07:54:49

PALM INTRANET

PTA Calculations for Application: 10/098689

Application Filing Date:	03/15/2002	PTO Delay (PTO):	757
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	577
Post-Issue Petitions:	0	Total PTA (days):	348
PTO Delay Adjustment:	168		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
65	09/03/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	168		
58	04/17/2008	MAIL NOTICE OF ALLOWANCE			
57	04/14/2008	ISSUE REVISION COMPLETED			
56	04/14/2008	DOCUMENT VERIFICATION			
55	04/14/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
54	04/14/2008	NOTICE OF ALLOWABILITY			
51	01/30/2008	DATE FORWARDED TO EXAMINER			
50	01/11/2008	RESPONSE AFTER NON-FINAL ACTION		2	49
49	10/09/2007	MAIL NON-FINAL REJECTION			
48	10/01/2007	NON-FINAL REJECTION			
47	08/28/2007	CASE DOCKETED TO EXAMINER IN GAU			
46	08/24/2007	CASE DOCKETED TO EXAMINER IN GAU			
45	06/06/2007	DATE FORWARDED TO EXAMINER			
44	06/01/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
43	06/06/2007	DATE FORWARDED TO EXAMINER			
42	06/01/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)			
41	06/06/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
40	06/01/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
39	02/28/2007	MAIL FINAL REJECTION (PTOL - 326)			
38	02/20/2007	FINAL REJECTION			
37	11/30/2006	NEW OR ADDITIONAL DRAWING FILED			
36	12/12/2006	DATE FORWARDED TO EXAMINER			
35	11/30/2006	RESPONSE AFTER NON-FINAL ACTION		286	32
		MAIL NOTICE OF INFORMAL OR NON-			

34	11/01/2006	RESPONSIVE AMENDMENT			
33	09/11/2006	DATE FORWARDED TO EXAMINER			
32.1	02/17/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
32	02/17/2006	RESPONSE AFTER NON-FINAL ACTION		160	15
31	09/11/2006	MAIL NOTICE OF RESCINDED ABANDONMENT			
30	09/11/2006	NOTICE OF RESCINDED ABANDONMENT IN TCS			
29	09/01/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
28	07/10/2006	ADD DISPOSAL COUNT			
27	07/10/2006	DISPOSAL FLAG CHANGE			
19	02/17/2006	PETITION ENTERED			
18	02/09/2006	CORRESPONDENCE ADDRESS CHANGE			
17	12/29/2005	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
16	12/21/2005	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
15	06/10/2005	MAIL NON-FINAL REJECTION	757		-1
14	06/09/2005	NON-FINAL REJECTION			
13	06/02/2005	CORRESPONDENCE ADDRESS CHANGE			
12	06/02/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
11	10/07/2004	CORRESPONDENCE ADDRESS CHANGE			
10	04/02/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	01/14/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	12/12/2002	APPLICATION DISPATCHED FROM OIPE			
7	12/09/2002	APPLICATION IS NOW COMPLETE			
6	11/18/2002	ADDITIONAL APPLICATION FILING FEES		129	3
5	11/18/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	11/18/2002	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
3	04/12/2002	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
2	03/28/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/15/2002	INITIAL EXAM TEAM NN			